

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

M-I LLC,

Plaintiff,

v.

FPUSA, LLC,

Defendant.

**CIVIL ACTION NO. 5:15-CV-00406
(DAE)**

Jury Trial Requested

SCHEDULING RECOMMENDATIONS

Pursuant to this Court's Order (Dkt. No. 46), the parties jointly recommend that the following deadlines be entered in the scheduling order to control the course of this case.

1. The parties agree to serve Rule 26(a)(1) initial disclosures by August 21, 2015.
2. The parties shall jointly submit a proposed discovery order and a proposed protective order by August 28, 2015.
3. A report on alternative dispute resolution in compliance with Local Rule CV-88 shall be filed by: September 10, 2015.
4. The parties asserting claims for relief shall submit a written offer of settlement to opposing parties by September 17, 2015, and each opposing party shall respond, in writing, by October 1, 2015.
5. The parties agree to jointly recommend proposed claim construction deadlines to the Court within 10 days of the Federal Circuit's decision in the currently pending appeal, *M-I LLC v. FPUSA, LLC*, No. 15-1870 (Fed. Cir. docketed July 29, 2015), if either party determines that such deadlines should be recommended in this case.

6. The parties shall file all motions to amend or supplement pleadings or to join additional parties by December 15, 2015.

7. The parties shall complete all fact discovery on or before January 28, 2016. Counsel may by agreement continue discovery beyond the deadline, but there will be no intervention by the Court except in extraordinary circumstances, and no trial setting will be vacated because of information obtained in post-deadline discovery.

8. All parties asserting claims for relief shall file their designation of potential witnesses, testifying experts, and proposed exhibits, and shall serve on all parties, but not file the materials required by FED. R. CIV. P. 26(a)(2)(B) by February 11, 2016. Parties resisting claims for relief shall file their designation of potential witnesses, testifying experts, and proposed exhibits, and shall serve on all parties, but not file the materials required by FED. R. CIV. P. 26(a)(2)(B) by March 24, 2016. All designations of rebuttal experts shall be designated within 14 days of receipt of the report of the opposing expert.

9. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, within thirty (30) days of receipt of the written report of the expert's proposed testimony, or within thirty (30) days of the expert's deposition, if a deposition is taken, whichever is later.

10. The parties shall complete all expert discovery on or before April 28, 2016. Counsel may by agreement continue discovery beyond the deadline, but there will be no intervention by the Court except in extraordinary circumstances, and no trial setting will be vacated because of information obtained in post-deadline discovery.

11. All dispositive motions shall be filed no later than May 26, 2016. Dispositive motions as defined in Local Rule CV-7(c) and responses to dispositive motions shall be limited to twenty (20) pages in length. Replies, if any, shall be limited to ten (10) pages in length in accordance with Local Rule CV-7(e). If the parties elect not to file dispositive motions, they must contact the courtroom deputy on or before this deadline in order to set a trial date.

12. The hearing on dispositive motions will be set by the Court after all responses and replies have been filed.

13. The trial date will be determined at a later date by the Court. The parties shall consult Local Rule CV-16(e)-(g) regarding matters to be filed in advance of trial. At the time the trial date is set, the Court will also set the deadline for the filing of matters in advance of trial.

14. All of the parties who have appeared in the action conferred concerning the contents of the proposed scheduling order on August 12-14, 2015, and the parties have agreed as to its contents.¹² The parties have also included patent litigation specific deadlines to promote an efficient and expeditious resolution to this case.

/s/ John R. Keville
John R. Keville

ATTORNEY FOR PLAINTIFF M-I LLC

¹ FPUSA has appealed the Court's order granting plaintiff's motion for preliminary injunction and related orders. The preliminary injunction is stayed pending resolution of FPUSA's appeal. FPUSA reserves its right to move to amend the scheduling order if a preliminary injunction were to become effective.

² FPUSA has informed M-I that FPM, FPUSA's Canadian parent company, intends to move to intervene in this case and assert a claim of infringement based upon FPM's U.S. Patent No. 9,015,959. M-I reserves its right to move to amend the scheduling order if the Court grants FPM's motion for intervention.

/s/ Stephen B. Crain
Stephen B. Crain

ATTORNEY FOR DEFENDANT FPUSA,
LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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/s/ John R. Keville
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